



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154029

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$565 from the Petitioner for the period of October 1, 2012 – April 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Sylvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner lives with her grandson EH. EH is 26 years old. Petitioner is elderly and disabled.
3. EH submitted applications and renewal applications for FS benefits on July 28, 2010 and August 14, 2012. In his applications, he reported that he resides with the Petitioner and that he is

disabled. He did not report any earned income. Petitioner was unaware that EH submitted applications for and received FS benefits. She was unaware that he included her in his FS group.

4. On August 10, 2012, EH began working at [REDACTED] [REDACTED] [REDACTED]. He did not report the employment to the agency within 10 days.
5. EH and the Petitioner did not purchase or prepare food together.
6. On September 9, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner informing her that it intends to recover an overissuance of FS benefits in the amount of \$565 for the period of October 1, 2012 – April 30, 2013.
7. On December 7, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”).⁷ C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FS Handbook, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a *prima facie* case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered from the Petitioner.

All adult and emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit. FS Handbook § 7.3.1.2; see also 7 CFR 273.11(e)(6).

The agency seeks to recover the overpayment from the Petitioner because she was an adult food unit member at the time of the overissuance.

The Petitioner contends that she was living with EH but she should not have been part of his FS group because she was unaware that he applied for and received FS benefits and that he had included her in the FS group. She testified that her grandson is cognitively disabled and did not understand how to properly complete the application. She argues that the agency should have verified the information in his application due to his cognitive disability. She further testified that she and EH did not purchase and prepare meals together. She occasionally invited him to eat a meal that she had prepared.

The FS regulations require the agency to verify information that is considered questionable. This can include disability status and household composition. FS Handbook §§ 1.2.3.4, 1.2.3.7, 1.2.5. To verify disability status, the agency should verify the disability with the Social Security Administration. FS Handbook § 1.2.6.1. Verification of household composition can be an oral or written statement from a third party or an affidavit indicating that food is purchased and prepared separately. FS Handbook § 1.2.6.2.

In this case, the agency was required to verify the disability status of EH. That should have revealed that he is cognitively disabled. I agree with the Petitioner that this should have led to additional verification of the information in his application, including household composition. The Petitioner testified credibly that she and EH did not purchase and prepare food together. There is no presumption in the regulations that they would constitute a food unit group due to age or relationship. I conclude, based on the evidence, that Petitioner was not in EH's food unit for purposes of FS benefits and is not, therefore, liable for the overpayment. This does not affect the agency's ability to recover the overpayment from EH.

CONCLUSIONS OF LAW

The Petitioner was not part of EH's FS group during the period of the overpayment and is not liable for the overpayment.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to rescind the Notification of FS Overissuance to the Petitioner and the agency must cease any action to collect an overpayment from the Petitioner for the period of October 1, 2012 – April 30, 2013. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

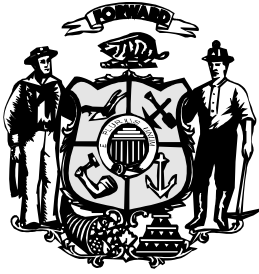
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 31, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability